[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-13039
Non-Argument Calendar

D.C. Docket No. 2:16-cv-00776-SPC-CM

LOUIS MATTHEW CLEMENTS,

Plaintiff-Appellant,

versus

ATTENTI US, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(May 31, 2018)

Before MARCUS, MARTIN, and ROSENBAUM, Circuit Judges.

PER CURIAM:

Louis Clements, proceeding pro se, appeals from the district court's dismissal of his second amended complaint for failure to state a claim pursuant to

Federal Rule of Civil Procedure 12(b)(6). He argues the district court erred by concluding his complaint was time-barred.

I.

On October 19, 2016, Clements brought this product liability action against 3M Electronic Monitoring (3M),[1] which manufactures electronic devices to monitor the locations of criminal offenders. On March 21, 2017, Clements filed his second amended complaint. Clements alleged that while he was on state probation, 3M's monitoring device "frequent[ly]" reported "bracelet gone" alerts to his probation officer when in fact the alerts were caused by the "two piece monitoring equipment losing connection with each other." Clements claimed to have video evidence of two incidents in which the device "los[t] track[]" of him when in fact he was "merely feet away," and witnesses who could corroborate a third incident.

Clements said 3M's device was a "major contributing factor" in his arrests for probation violations and he spent 216 or 241 days in jail as a result of the device's defect. He also said his final violation-of-probation arrest in October 2012 was "thrown out" after he provided eyewitnesses who confirmed that he was doing installation work at a beach house, rather than enjoying the beach. He asked for $14,460,000 for "[e]motional injuries including PTSD, anger, anxiety, loss of

[1] During this appeal, 3M was sold by 3M Company and the company name was changed to Attenti Electronic Monitoring. For the sake of clarity, we continue to use 3M.

appetite, fear (of retaliation), humiliation, stress, depression, nightmares, [p]sychological damage, stomach and digestion problems (diarrhea, stomach pains, and forming of IBS-D)."

3M moved to dismiss the second amended complaint. 3M asked the court to take judicial notice of the state criminal docket showing the dates of Clements's seven arrests for probation violations. According to 3M, Florida's four-year statute of limitations for product liability claims had already run from the last date of those arrests, September 13, 2012. 3M alternatively argued that Clements's complaint should be dismissed for failure to allege physical harm, a necessary element to recovery under either a theory of strict product liability or negligence in Florida.

Clements filed a response in opposition arguing his claims weren't time-barred. He agreed he was asserting "product liability claims for negligence and strict liability." He also agreed "he has not alleged proper physical harms and that the harms he has suffered . . . are not recoverable under Florida law." He proposed to amend his complaint to allege intentional infliction of emotional distress instead.

The district court took judicial notice of the state criminal docket and dismissed Clements's complaint with prejudice as time-barred. It did not address 3M's alternate ground for failure to allege physical harm. Clements filed a motion seeking appeal of the order as well as recusal of the district judge. The district

court treated the appeal request as a motion for reconsideration and denied it. The court also denied the motion for recusal. This appeal followed.

II.

"We review de novo the district court's grant of a motion to dismiss for failure to state a claim under [Federal Rule of Civil Procedure] 12(b)(6), accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff." Renfroe v. Nationstar Mortg., LLC, 822 F.3d 1241, 1243 (11th Cir. 2016) (quotation omitted). A complaint survives a motion to dismiss if it alleges sufficient facts, accepted as true, "to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 570, 127 S. Ct. 1955, 1965, 1974 (2007). "Pro se pleadings are held to a less stringent standard than pleadings drafted by lawyers." Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998) (per curiam). This Court can "affirm the district court's dismissal on any ground that is supported by the record." Ray v. Spirit Airlines, Inc., 836 F.3d 1340, 1348 (11th Cir. 2016) (quotation omitted).

III.

We affirm the dismissal of Clements's complaint for failure to allege physical harm to his person or property.[2]

[2] Because we affirm on this alternate ground, we need not address Clements's arguments as to the district court's determination that his claims were time-barred.

In Florida, strict products liability requires "physical harm . . . to the ultimate user or consumer, or to his property." West v. Caterpillar Tractor Co., 336 So. 2d 80, 84, 87 (Fla. 1976) (quoting and adopting Restatement (Second) of Torts § 402A). And plaintiffs cannot recover for "psychological trauma alone when resulting from simple negligence." Brown v. Cadillac Motor Car Div., 468 So. 2d 903, 903–04 (Fla. 1985) (affirming vacatur of jury award for plaintiff's psychological trauma resulting from car accident caused by design defect in accelerator pedal).[3]

Clements has acknowledged that, in his second amended complaint, he alleged strict product liability and negligence claims and did not allege physical harm. And instead of seeking leave to amend his complaint to add allegations of physical harm, he asked to be allowed to allege a different claim for intentional infliction of emotional distress. In this way, Clements recognized he could not amend his strict product liability and negligence claims to survive dismissal. And because Clements does not argue on appeal that the district court erred in denying him leave to amend his complaint to allege a claim for intentional infliction of

[3] Florida allows recovery for only emotional distress damages in three types of claims: (1) intentional infliction of emotional distress when caused by "outrageous" conduct; (2) negligent infliction of emotional distress when "a plaintiff was in the sensory perception of physical injuries negligently imposed upon a close family member and where the plaintiff suffered a discernible physical injury"; and (3) wrongful birth claims. R.J. v. Humana of Fla., Inc., 652 So. 2d 360, 363 (Fla. 1995).

emotional distress, we do not address whether dismissal without leave to amend was appropriate.

AFFIRMED.